(2) Supreme Court, U.S.
FILED

06-913 NOV 09 2006

OFFICE OF THE CLERK

NO.

IN THE SUPREME COURT OF THE UNITED STATES

DONNA ADAMS – HEDRICK,
Petitioner,

ROBERT HEDRICK,
Petitioner,

v.

LIBERTY MUTUAL INSURANCE COMPANY,
Respondent

On Petition for Writ of Certiorari to
The United States Court of Appeals for the Fifth Circuit

APPENDICES FOR PETITION FOR A WRIT OF CERTIORARI

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APPENDIX A

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 05-20816
Summary Calendar

LIBERTY MUTUAL INSURANCE COMPANY,

Plaintiff-Appellee,

versus

DONNA ADAMS,

Defendant-Appellant,
ROBERT HEDRICK

Intervenor Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 4:05-CV-1974

Before KING, HIGGINBOTHAM, and GARZA, Circuit Judges.

PER CURIAM:*•

Appellee's motion to dismiss for lack of jurisdiction appeal of district court's remand order and ostensible appeals of any other orders, other than that granting Appellee's motion for sanctions and statutory fees, is GRANTED. See 28 U.S.C. § 1447(d); *see also* Louisville & Nashville R. Co. v. Mottley, 211 U.S. 149, 150-53 (1908) (plaintiff, not defendant, controls

---

* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.1.

removability of case (; Sitton v. United States, 413 F.2d 1386, 1389 (5th Cir. 1969) (federal courts do not act as appellate arm of state courts.).

The districts court's sanctions order against Appellants, under Federal Rule of Civil Procedure 11, which granted non-monetary relief and, based on fees incurred by Appellee during its two prior successful remands, $10,750, was not an abuse of discretion and is AFFIRMED. *See Skidmore Energy, Inc. v. KPMG,* 455 F.3D 564, 566 (5TH Cir. 2006). To the extent Appellants appeal the court's award of &7,031.25 in statutory fees under 28 U.S.C. $ 1447(c), that award was also not an abuse of discretion and is AFFIRMED. *See Hornbuckle v. State Farm Lloyds,* 385 F. 3d 538, 541 (5th Cir. 2004).

Appellee's motion for costs on appeal and motion, pursuant to Federal Rule of Appellate Procedure 38, for damages in the amount of fees incurred in defending this appeal are GRANTED and the matter REMANDED to the district court for determination of such (single) costs and fees incurred in defending this appeal. *See Lyons v. Sheetz,* 834 F.2d 493, 495-96 (5th Cir. 1987); *Clark v. Green,* 814 F.2d 221, 223 (5th Cir. 1987) (explaining that even pro se litigants lack "unrestrained license to pursue totally frivolous appeals").

Appellants' motion for $20,000 in sanctions against Appellee, motion to turn appeal over to the FBI for investigation of allegations of conspiracy between employees of this court and Appellee, and motion to continue all actions pending the outcome of that investigation are DENIED.

Finally, we warn Appellants that additional frivolous pleadings, suits, or appeals filed by them in this matter will invite further sanctions. It is time for the underlying case to proceed in state court.

APPENDIX B

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

LIBERTY MUTUAL INSURANCE COMPANY PLAINTIFF,	§	
VS.	§	NO. H-05-1974
DONNA ADAMS, DEFENDANT.	§	
ROBERT HEDRICK, GRANTEE UNDER POWER OF ATTORNEY, NEXT BEST FRIEND; SPOUSE & INTERVENOR	§	CASE NO. 25628-1 REMOVED FROM 239TH JUDICIAL DISTRICT BRAZORIA COUNTY, TX

ORDER GRANTING PLAINTIFF LIBERTY MUTUAL INSURANCE COMPANY'S MOTION FOR SANCTIONS AND MOTION FOR STATUTORY ATTORNEY'S FEES

On consideration of the Motion for Sanction and Motion for Statutory Attorney's Fees of Plaintiff LIBERTY MUTUAL INSURANCE COMPANY, in the above entitled and numbered cause, for the imposition of sanctions on Defendant DONNA ADAMS and Intervenor ROBERT HEDRICK and for an award of statutory attorney's fees, it appears to the Court that the actions of Defendant DONNA ADAMS and Intervenor ROBERT HEDRICK in filing their Notice of Removal on June 6, 2005, violated Rule 11(b)(1), (2) and (3) of the Federal Rules of Civil Procedure, were in bad faith and without substantial justification in that the Notice of Removal filed on June 6, 2005, is identical in nature and involves the same parties and issues, as two prior Notices of Removal filed by Defendant DONNA ADAMS and Intervenor ROBERT HEDRICK under Case Nos. H-04-0954 and H-05-0987 that were concluded by Orders of Remand dated October 22, 2004

and May 6, 2005, respectively, in favor of Plaintiff LIBERTY MUTUAL INSURANCE COMPANY and against Defendant DONNA ADAMS and Intervenor ROBERT HEDRICK and involved the same jurisdictional issues as those in Case No. H-01-3416 that was concluded by an Order of Dismissal dated December 10, 2001, which was affirmed on appeal in Cause No. 02-20111 before the Fifth Circuit, justifying an imposition of monetary and nonmonetary sanctions.

It further appears to the Court that Plaintiff LIBERTY MUTUAL INSURANCE COMPANY is the prevailing party in this action, that an award of statutory attorney's fees is authorized by 28 U.S.C. 1447(c) and that according to the guidelines set forth in *Johnson v. Georgia Highway Express, Inc.*,488 F.2d 714 (5th Cir. 1974), each of which were considered by the Court, the attorney's fees requested by Plaintiff LIBERTY MUTUAL INSURANCE COMPANY in the amount of $7,031.25 are reasonable, necessary and merited considering the actions of the Defendant DONNA ADAMS, and Intervenor ROBERT HEDRICK and the issues presented in this case. It is therefore,

ORDERED that Defendant DONNA ADAMS and Intervenor ROBERT HEDRICK, jointly and severally, are required, pursuant to 28 U.S.C. 1447(c) to pay Plaintiff LIBERTY MUTUAL INSURANCE COMPANY, the costs and expenses including attorney's fees in the amount of $7,031.25 incurred by Plaintiff LIBERTY MUTUAL INSURANCE COMPANY in opposing the June 6, 2005 removal action filed by Defendant DONNA ADAMS and Intervenor ROBERT HEDRICK, for which let execution issue. It is further

ORDERED that Defendant DONNA ADAMS and Intervenor ROBERT HEDRICK, their agents, employees, representatives and attorneys, are sanctioned from filing any further pleadings, suits or removals against LIBERTY MUTUAL INSURANCE COMPANY, its agents, employees, representative and attorneys, having its genesis in the March 29, 2000 on-the-job injury workers' compensation claim, in the U.S. District Court, Southern District of Texas, Houston Division, and in any state court of the State of Texas:

a. That upon presentation to the Clerk of a pleading by DONNA ADAMS, DONNA ADAMS HEDRICK, DONNA HEDRICK and/or ROBERT HEDRICK, or

under any alias, or their agents, employees, representatives, guardian, guardian ad litem, attorney-in-fact and attorneys or any person or entity, not a licensed attorney, acting upon their behalf, the Clerk shall file the pleading, but shall not issue summons:

b. The Clerk shall attach a copy of the Order of this Court granting these sanctions to the pleading and immediately present it to the Court for review;

c. No attempt to serve the pleading shall be made by any person until the Court reviews the complaint, finds it is not frivolous, and Orders summons to issue and service to proceed;

d. If the Court finds the pleading or any part of it is frivolous, it shall *sua sponte* dismiss the pleading and impose sanctions upon DONNA ADAMS and ROBERT HEDRICK or anyone acting on their behalf or in concert with them shall result in sanctions, up to and including prosecution for contempt pursuant to 18 U.S.C. §§ 401, 402; and further

ORDERED that DONNA ADAMS and ROBERT HEDRICK, both jointly and severally are sanctioned with a monetary directive and required to pay all reasonable attorney's fees in connection with LIBERTY MUTUAL INSURANCE COMPANY'S successful remands of this case to state court after ADAMS' and HEDRICK'S March 10, 2004 and March 23, 2005, removed actions in the amount of $10,750.00, for which let execution issue.

Signed July 25, 2005, at Houston, Texas.

_____

Kenneth M. Hoyt
United States District Judge.

APPENDIX C

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

LIBERTY MUTUAL	§	
INSURANCE COMPANY	§	
Plaintiff,	§	
VS.	§	CIVIL ACTION H-05-1974
	§	
DONNA ADAMS,	§	
Defendant.	§	

ORDER

Pursuant to the Fifth Circuit Court of Appeals' instructions on remand in this case, the plaintiff, Liberty Mutual Insurance Company, shall provide a motion for costs and fees incurred in defending the appeal of this case with an appropriate proposed order within 30 days. Ten (10) days after the filing of the plaintiff's motion, the defendants Adams and Hedrick shall file a response.

It is so Ordered.

SIGNED and ENTERED this 28th day of September, 2006.

_____

Kenneth M. Hoyt
United States District Judge

APPENDIX D

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

LIBERTY MUTUAL INSURANCE COMPANY,	.	
Plaintiff	.	
	.	Civil Action
VS.	.	No. H-05-CV-1974
	.	
DONNA ADAMS,	.	Houston, Texas
Defendant	.	July 25, 2005

.....

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE KENNETH HOYT
HEARING

APPEARANCES:

FOR THE PLAINTIFF:

Ms. Mary Markantonis
DEAN G. PAPPAS AND ASSOCIATES
10375 Richmond Avenue
Suite 1900
Houston, Texas 77042
(713)914-6201

COURT REPORTER:

GAYLE L. DYE, CSR, RDR, CRR
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Houston, Texas 77002
(713)250-5582

PROCEEDINGS RECORDED BY STENOGRAPHIC MEANS, TRANSCRIPT PRODUCED FROM COMPUTER-AIDED TRANSCRIPTION

PROCEEDINGS
July 25, 2005

THE COURT: Are the parties present in 05-1974? Have you seen the Defendants Adams or Hedrick?

MS. MARKANTONIS: No, Your Honor. This morning at my office I received a motion –a motion to stay. It appears to have been filed last week, but my office only received it today. And I believe he's requesting that this hearing be continued for one week and to be held by telephone.

THE COURT: Well, I think that my staff communicated to him on last week that his motion would not be granted and that the court would not be – would not – I'll tell you what, why don't you come forward, please, and let's see if we can make a short record rather than take a break.

(Side-bar discussion off the record between the Court and the case manager.)

THE COURT: What is your name for the record, please?

MS. MARKANTONIS: Mary Markantonis. I'm with Dean, Pappas and Associates, and I represent Liberty Mutual.

THE COURT: All right. I think I need to correct the record. Our staff --- or my office did not contact him. I think the message that I left was that, if he contact us – contacted us, that is, Mr. Hedrick, that he was to be informed that the matter would not be continued because this is – is growing by the inch, it seems, in terms of the paperwork; and I'm not really sure I understand what's going on. So, let me ask you to make a little record for me here. Tell me how this started and how it has developed. I know that – I can see the procedural history. But what is the situation with Ms. Adams and what – how did this get started?

MS. MARKANTONIS: Well, Your Honor, originally, I believe in federal court this started in your court.

THE COURT: No. How did it get started? She was an employee someplace?

MS. MARKANTONIS: Yes, Your Honor. She worked for IBM.

THE COURT: All right.

MS. MARKANTONIS: And she had an on-the-job-injury.

THE COURT: What kind of injury did she have?

MS. MARKANTONIS: She had an injury to her respiratory system because of dust.

THE COURT: So, she is disabled?

MS. MARKANTONIS: She's not disabled as far as I know.

THE COURT: All Right.

MS. MARKANTONIS: I don't know if she's applied for disability or not.

THE COURT: So, she's – she has –

MS. MARKANTONIS: She has worked since those two worker's compensation claims. One was in March of 2000, I believe, and I'm not sure about the year. I have it in my pleadings but –

THE COURT: Okay, What is she claiming as a respiratory problem, like emphysema or something like that?

MS. MARKANTONIS: She has – she's more susceptible to asthma attacks and she had a –

THE COURT: Is that something that she claims to have just developed at IBM or is this something that she's had historically or does anybody know?

MS. MARKANTONIS: I believe she had asthma prior to-

THE COURT: As a child or as an adult growing up?

MS. MARKANTONIS: I can't tell you that.

THE COURT: Okay.

MS. MARKANTONIS: I didn't handle the worker's compensation claim, and I'm not familiar with those medical histories.

THE COURT: But I understand, from looking at the record as I – that I have before me, that those two claims – or the last of those claims has been resolved except, I gather, that Liberty Mutual has appealed that decision of the Compensation Board. And is that still pending as far as you know?

MS. MARKANTONIS: That's in question at this point as well. It is still pending. Where, I'm not sure. The –

THE COURT: There was an award made.

MS. MARKANTONIS: There was an award made. Liberty Mutual filed the original petition in Brazoria County, the county of residence of Ms. Adams –

THE COURT: Right.

MS. MARKANTONIS: -- to set aside that award. I entered the suit – I entered representation of Liberty Mutual during that time frame and proceeded to, you know, move the case forward.

THE COURT: Uh-huh.

MS. MARKANTONIS: At that point, in sending a motion to compel for more responsive answers to discovery requests, Mr. Hedrick on behalf of Ms. Adams filed that initial removal to federal court.

THE COURT: Un-huh.

MS. MARKANTONIS: And it was removed twice.

THE COURT: Uh-huh.

MS. MARKANTONIS: At this point, he decides to file a removal of the severed action, because during the pendency of the case in state court, he filed a cross claim for Ms. Adams based on bad faith or the handling of the insurance claim.

THE COURT: All right.

MS. MARKANTONIS: That was severed back in January of '04. Now he has removed the severed case; and in the process, he sued the Court, the judge –

THE COURT: The State Court?

MS. MARKANTONIS: That's correct.

THE COURT: And I saw something in your papers that said that he had recused himself.

MS. MARKANTONIS: Yes. I found out when I went for a hearing, which, of course, did not take place, in June – last month that the judge was recusing himself and he was going to transfer the case out of his court and possibly out of Brazoria County. He said he was going to discuss it with the administrative judge for that district, and I have not been notified where the case has been sent.

THE COURT: Has Mr. Hedrick, as far as you know, threatened any of these persons? I'm not sure what the nature of the removal is. It's one thing to tell a person to get out of town, it's another thing for you to move out of town. I mean, what is Mr. Hedrick's – is he doing something that the judge is concerned about other than being litigious here?

MS. MARKANTONIS: Well, I believe that the judge was going to send the case away from that courthouse because he couldn't – he didn't feel right hoisting it onto –

THE COURT: To another judge.

MS. MARKANTONIS: --another judge.

THE COURT: I see. I see. So, in the interest of avoiding further entanglement, I guess, of other judges –

MS. MARKANTONIS: That he knew personally.

THE COURT: Yes, Okay. Is Ms. Adams simply wearing a maiden name or are they still married?

MS. MARKANTONIS: I believe they are still married. But the claim was filed on Adams. And so, that's the way it was done.

THE COURT: And is that the way she's employed, as far as you know, Donna Adams?

MS. MARKANTONIS: I don't know. I can't speak to that.

THE COURT: Is she working now?

MS. MARKANTONIS: I don't know. I can't speak to that.

THE COURT: And what was the award? How much money was awarded in the – in the worker's comp. case, if you recollect?

MS. MARKANTONIS: Well, she received temporary disability benefits and –

THE COURT: Does that mean a monthly payment or something?

MS. MARKANTONIS: Weekly.

THE COURT: A weekly payment?

MS. MARKANTONIS: Yes, Your Honor.

THE COURT: And –

MS. MARKANTONIS: And then, when she returned to work, then they were stopped.

THE COURT: Okay. And so, she returned to work since that award was made?

MS. MARKANTONIS: I believe -- I was – I was told by, well, another attorney in my firm that handled the worker's compensation claim that she had returned to work – had worked since –

THE COURT: At some point since that –

MS. MARKANTONIS: Yes, Your Honor.

THE COURT: -- since that award?

MS. MARKANTONIS: Yes.

THE COURT: -- And what is it that Liberty Mutual is attempting to avoid, a lump sum settlement of some sort, percentage of disability award?

MS. MARKANTONIS: Yes, that. And the fact that the litigious nature of Ms. Adams and her husband, Mr. Hedrick, have caused additional lawsuit –

THE COURT: Uh-huh.

MS. MARKANTONIS: -- and additional claims –

THE COURT: Well, but I mean the genesis of part of this is is Liberty Mutual appealing the award that was made by the Compensation Board and approved by, I guess –

MS. MARKANTONIS: The Appeals Panel.

THE COURT: -- the Appeal Panel. So, there was some award made, and that was, I guess, to pay so much on a weekly basis; and at the end of that term, there very well might have been some basis for a lump sum award depending upon whether or not there was a percentage of disability concern. And I'm just trying to figure out what Liberty Mutual was appealing. Apparently, they did not – Liberty Mutual did not pay the weekly award.

MS. MARKANTONIS: They did pay the weekly award.

THE COURT: Okay.

THE COURT: So, if there's anything –

MS. MARKANTONIS: It's really an appeal of the finding that she sustained a compensable injury, and it was a reaggravation because –

THE COURT: So, if you were to win on that, you really don't get the money back –

MS. MARKANTONIS: No.

THE COURT: -- or you don't – you put yourself in a position, I guess, where you would maybe avoid some future problems with the same employee.

MS. MARKANTONIS: Yes, Your Honor, which are –

THE COURT: I see.

MS. MARKANTONIS: -- very possible.

THE COURT: Likely, in the sense that she's subject to having these attacks, apparently. I see. Okay.

Myra, do we have a phone number for Mr. – Mr. Hedrick?

THE CASE MANAGER: Yes, sir, I do.

THE COURT: Do we know whether or not he –

(Discussion off the record between the Court and the case manager.)

(Recorded message played on the phone.)

THE COURT: What did she say?

MS. MARKANTONIS: She said Donna and Bob.

THE COURT: Oh, Donna and Bob. All right. Well, Mr. Hedrick, Ms. Adams, this is Judge Hoyt calling regarding your case and attempting to locate you and talk to you about your case because you're due in court today. My number is 713-250-5615 -- 5613. Thank you very much. Yeah, I hung it up.

THE CASE MANAGER: Okay.

THE COURT: Do you know where she is working?

MS. MARKANTONIS: I don't. And I don't know if she is working now.

THE COURT: She probably still works for IBM, do you think?

MS. MARKANTONIS: No, she does not work for IBM anymore.

THE COURT: She does not work for IBM anymore, uh.

MS. MARKANTONIS: And I don't know if she's presently employed either.

THE COURT: Uh-huh. Do you know Dr. Wanda Sphuler?

MS. MARKANTONIS: No, Your Honor.

THE COURT: I've got some – I've got a letterhead here from Sphuler Medical Associates in Friendswood, Texas and a letter signed by someone representing themselves to be Dr. Sphuler. It does not have letterhead for a return address. Well, let's see, maybe it does.

MS. MARKANTONIS: The second one does.

THE COURT: This is the back side of it. The second page does doesn't it?

MS. MARKANTONIS: Yes, Your Honor, I noticed that too. And for the record, I don't have any objection to hold the hearings with Adams and Hedrick by phone on their part.

THE COURT: **I have a problem with that. I need to look at the man who's filing these proceedings and practicing law without a license, and I'm concerned about that, and these things have a way of developing into things that are way beyond what we would like to see happening at the courthouse because, generally, the frustration and anger turns away from Liberty Mutual and then toward the Courts. And when it does that, it does concern me. If she's able to go to work, leave the house, she's certainly able to come to the courthouse. So, what do you want? What action do you want?**

MS. MARKANTONIS: Well, Your Honor, I'd like to have the case remanded back to state court, and I'd like to have sanctions entered against Adams and Hedrick from filing anything further in federal court unless a federal court judge inspects their pleadings. And if they're found to be not frivolous, then they can proceed with the action. But if they're frivolous, I'd like for them all to be dismissed immediately without having to have my clients defend them.

THE COURT: What case or cases are pending at this point? Is it just the case pending here or are there other cases pending in our federal court system?

MS. MARKANTONIS: There is a case against Judge Sebesta.

THE COURT: That's pending in the federal courts?

MS. MARKANTONIS: Yes, Your Honor. And the state attorney general – Attorney General's Office has filed a motion to dismiss that case.

THE COURT: Do you know who that's pending before?

MS. MARKANTONIS: No, Your Honor. But –

THE COURT: It's no problem. I didn't know if you were involved in that in some respect.

MS. MARKANTONIS: No, I'm not. I do know the case number is 2100, I believe.

THE COURT: 2100?

MS. MARKANTONIS: Yes, Your Honor.

THE COURT: Is that an '05 number?

MS. MARKANTONIS: Yes, Your Honor.

THE COURT: 05-2100. Where is that, Myra, if you can see it for us.

THE CASE MANAGER: That's actually pending before Judge Johnson, Nancy Johnson.

THE COURT: How did it get there, transfer from one of the ---she's working for who? Who is she a magistrate for, Judge Lake and who else? And Rainey?

THE CASE MANAGER: There was an order referring it from Judge Lake.

THE COURT: Okay. So, it's Sim Lake's case. Okay. All right. I can't think of anything else that we can ask or do. So, I will review your documents and , in essential, grant the motions that you've requested.

MS. MARKANTONIS: Thank you , Your Honor.

THE COURT: All right? All right. Thank you very much.

MS. MARKANTONIS: Thank you.

(Proceedings concluded.)

I certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter, to the best of my ability.

SIGNED 10/25/05

Gayle L. Dye, CSR, RDR, CRR Date

APPENDIX E

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

LIBERTY MUTUAL	§
INSURANCE COMPANY	§
PLAINTIFF/CROSS	§
DEFENDANT	§
V.	§
	§ No. H-05-1974
DONNA ADAMS	§
DEFENDANT	§
	§ Case#25628-1 Removed
ROBERT HEDRICK	§ from 239th Judicial
GRANTEE UNDER	§ District Court,
POWER OF ATTORNEY;	§ Brazoria County, TX
NEXT BEST FRIEND;	§
SPOUSE; INTERVENOR	§

RECUSAL ORDER

I stand recused in this case.

_____
KENNETH M. HOYT
United States District Judge

Date: November 16, 2006

APPENDIX F

NO. 25628

LIBERTY MUTUAL INSURANCE COMPANY, Plaintiff,	§ IN THE DISTRICT COURT § § OF BRAZORIA § COUNTY, TEXAS § 239TH JUDICIAL DISTRICT
VS.	§ §
DONNA ADAMS, Defendant,	§ §

ORDER GRANTING SEVERANCE AND ABATEMENT

BEFORE THIS COURT is LIBERTY MUTUAL INSURANCE COMPANY'S Motion to Sever and Motion for Abatement. After reviewing the Motion, any responses, and the pleadings on file herein, the Court is of the opinion that LIBERTY MUTUAL INSURANCE COMPANY's Motion to Sever and Plea in Abatement are meritorious and should be granted. It is therefore,

ORDERED, ADJUDGED, AND DECREED that all of the claims and clauses of action asserted by DONNA ADAMS for bad faith, breach of the duty of good faith and fair dealing, extra-contractual claims and causes of action, claims under the Texas Deceptive Trade Practices Act, § 17.46, Tex.Bus. & Comm. Code, claims under Article 21.21 of the Texas Insurance Code, the Unfair Claims Settlement Practices Act, allegations for "breach of contract", extra-contractually related and claims for attorney's fee unrelated to the claimant's claim for statutory workers' compensation claim benefits, and any other claims and causes of action unrelated to the claim of DONNA ADAMS for statutory workers' compensation benefits against LIBERTY MUTUAL INSURANCE COMPANY are hereby severed. It is further,

ORDERED, ADJUDGED AND DECREED by the Court that the Clerk of the Court are hereby Ordered to assign the severed action the separate cause number of 25628-A, and to

prepare certified copies of the following documents and include them in file Cause No. 25628-A:

1. Plaintiff's Original Petition of LIBERTY MUTUAL INSURANCE COMPANY;
2. Defendant's Original Answer of DONNA ADAMS;
3. Defendant DONNA ADAMS' Counter Claim;
4. LIBERTY MUTUAL INSURANCE COMPANY, Plaintiff/Counter-Defendant's Original Answer to Counter-Claim;
5. LIBERTY MUTUAL INSURANCE COMPANY'S Motion to Sever and Plea to Abatement.
6. A copy of this Order granting severance and abatement;
7. A copy of the Court's Docket Sheet.

It is further,

ORDERED that all of the claims and causes of action asserted by DONNA ADAMS for bad faith, breach of the duty of good faith and fair dealing, extra-contractual claims and causes of action, claims under the Texas Deceptive Trade Practices Act, § 17.46, Tex. Bus. & Com. Code, claims under Article 21.21 of the Texas Insurance Code, the Unfair Claims Settlement Practices Act, allegations for "breach of contract," extra-contractually related and all other claims in the severed action against LIBERTY MUTUAL INSURANCE COMPANY are hereby ABATED until final determination of DONNA ADAMS' claims and causes of action bro underlying statutory workers' compensation benefits.

SIGNED this 26th day of January, 2003

Pat Sebesta
Judge Presiding

APPROVED:

DEAN G. Pappas & Associates

By Dean G. Pappas
Dean G. Pappas
State Bar No. 15454375
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(713)914-6200
(713)914-6201 (Facsimile)

ATTORNEY FOR PALINTIFF/
COUNTER-DEFENDANT
LIBERTY MUTUAL INSURANCE COMPANY

APPENDIX G

TEXAS WORKERS' COMPENSATION COMMISSION
HEARINGS DIVISION
HOUSTON EAST LOCAL OFFICE
HOUSTON, TEXAS

DONNA ADAMS,	§
CLAIMANT	§
	§
v.	§ **DOCKET NO.**
	§ **HE-00071055-02-CC-HD48**
LIBERTY MUTUAL INS.CO.	§ **And**
CARRIER	§**HE-X2153-405-01-CC-HD48**
	§

DECISION AND ORDER

This case is decided under the Texas Workers' Compensation Act (the Act), Tex.Labor Code ann. §§ 410.151 –410.169 (Vernon 1996, Supp. 2003) and Tex. Workers' Comp Comm'n, 28 Tex. Admin. Code §§ 142.1 – 142.20 (West).

STATEMENT OF THE CASE

Benefit review conferences were held on May 17, 2001 to mediate resolution of the disputed issue(s), but the parties were unable to reach agreement. A benefit contested case hearing was held on April 24, 2003, with the record closing on the same date, to decide the following disputed issue(s):

In 00071055-01:

1. Did the claimant's inhalation injury of March 29, 2000 extend to include chronic obstructive pulmonary disease and chronic asthma, as well as mental trauma?
2. Did the claimant sustain disability as a result of the compensable injury, and if so, for what period?

In X2153405-01:

1. Did the claimant sustain a compensable injury to her lungs on August 17, 2000?
2. Did the claimant sustain disability as a result of an August 17, 2000 injury, and if so, for what period? (restated with permission of the parties)
3. Is the carrier relieved of liability due to claimant's failure to timely report her injury within 30 days? (restated with permission of the parties)

Claimant appeared and was represented by Robert Hedrick, representative. Carrier appeared and was represented by Tommy Smith, attorney. In attendance on behalf of the employer was Michael Clark. Also present was Traci Gardner, adjustor.

EVIDENCE PRESENTED

The following witnesses testified:

Claimant, Donna Adams
Robert Hedrick
Ann Grote
Traci Gardner
Michael Clark

Exhibits were offered and admitted as set out in the record:
Claimant exhibits:

Book 1
Tab 1, BRC report
Tab 2, BRC report
Tab 3, Points and authorities
Tab 4, affidavits, lettered A through H
Tab 5, Medications list
Tab 6, Claimant's argument
Michael Clark Deposition transcript with exhibits

Book 2

A. IBM Health assessment questionnaire
B. Medical report
C. Clear Lake RMC
D. Clear Lake RMC

E. Clear Lake RMC
F. Radiology report
G. Chest x-ray
H. Radiology report
I. Photo-24 Hour Fitness
J. Photo, formica sheets
K. Photo, counters and dust
L. Photo, Counters, formica panels and dust
M. Affidavit, Knighten
N. Admission record, Memorial Hospital Southeast
O. Radiology report
P. Radiology report
Q. Dr. Gupta
R. Discharge diagnosis
S. Preliminary local climatological data
T. Affidavit, Thacker
U. Admission record, Dr. DeWitt
V. Photo, drywall patch
W. Discharge diagnosis
X. Affidavit, Lindeman
Y. Radiology report
Z. Radiology report
AA. Corke statement
BB. Medical evaluation, Dr. Botto
CC. TWCC IME
113. Dr. Chan-Yeung
114. NORA priority research areas
115. Occupational asthma
116. Occupational & Environmental Sensitization
117. Primer on allergic reactions
118. Allergic reactions
119. Allergic reactions
120. Allergic reactions
121. Plastics, Brian Kohler
122. Manual for the manufacture of polymer matrix composites
123. Formica brand laminate-manufacturing process

124. Formica Canada Inc. v. Deputy Minister
125. Fact sheet, epoxy resin systems
126. The MSDS – what is it?
127. Interpreting toxicity values
128. MSDS, plywood and particle board
129. MSDS, formaldehyde
130. MSDS, ammonium hydroxide
131. MSDS, Anhydrous ammonia
132. MSDS, Urea formaldehyde resin
133. MSDS, Urea
134. MSDS, Biuret
135. MSDS, sodium hydroxide
136. MSDS, potassium sodium tartrate
137. MSDS, cupric sulfate pentahydrate
138. MSDS, barium chloride
139. MSDS, formalin
140. MSDS, phenolic resin
141. MSDS, melamine
142. MSDS, alkyd resin solution
143. MSDS, tetrachlorophthalic anhydride
144. MSDS, Phthalic anhydride
145. MSDS, trimellitic anhydride
146. MSDS, Weldwood plastic resin glue

Loose sheets (2 pages)
Table of Chemicals Claimant was exposed to on March 29, 2000

Carrier exhibits:

A. Letter, Donna Adams
B. TWCC-41 and 45
C. IBM documents
D. Note from Donna Adams
E. Documents from Liberty Mutual
F. Part, transcript conversation
G. Hedrick packet
H. Phone logs
I. Correspondence, Hedrick
J. Packet regarding OSHA
K. Dr. Gupta
L. Dr. McCarroll
M. Affidavits

N. Dr. Corke
O. Medical records, Memorial Southeast
P. Dr. Botto
Q. Clear Lake Hospital
R. Dr. Diaz
S. Dr. Varner
T. Letter, Tommy Smith
U.

Hearing Officer exhibits:

1. Benefit review Conference report
2. Benefit review Conference report
3. Carrier information
4. Motion for contempt, etc. with order
5. Motion for continuance with order

STATEMENT OF THE EVIDENCE

Claimant worked for IBM on a team that installed point of sale computer systems for customers who brought such products form IBM. Due to the type of work, Claimant was subject to whatever environment was found in the various customer locations.

Claimant had a long history of asthma, and it ran in her family. She was hospitalized at least three times wherein asthma was the primary cause of the hospitalization. Prior to the incidents in question, the last time was in March 1997. After that, she was put on some different medicine and seemed to have her asthma under control.

Michael Clark took over Claimant's team around March 1, 2000, and Claimant's situation with IBM and her health went downhill rapidly. On March 29, 2000 Claimant installed computer systems at a 24-Hour Fitness location that was under construction, and had the onset of a severe asthma attack that put her in the hospital for several days. At this construction site, they were installing floor tiles and Formica countertops, and painting. Dust was in the air, including dust from sanding countertops and cutting Formica, as were paint and glue fumes.

Claimant filed a claim for a compensable injury due to the asthma attack on March 29, and Carrier has accepted an injury in the form

of an aggravation of Claimant's chronic asthma. Under the Act, an aggravation is not merely an occurrence of symptoms, but instead is a worsening or exacerbation of the underlying condition.

Claimant returned to work around April 26, 2000, and did not miss a substantial amount of time until an event of August 17, 2000. She had been having some increasing symptoms that week, and had missed two days that she had attributed to asthma. On August 17, she worked for several hours in a bank building with no air conditioning or ventilation. Weather records indicate that the outside air temperature in the Houston area that day reached 100 degrees.

Claimant testified that working in the heat triggered an acute asthma attack which put her in the hospital on August 19. The evidence indicates that a number of factors, including but not limited to the August 17 work environment, triggered the asthma attack. In any event, the attack was her most serious ever, and nearly caused her death. She was intubated, ventilated, and still doctors were unable to stabilize her condition for several days.

Claimant recovered from that attack and was released home, but has never returned to work at IBM. She worked another job for several months, thinking that a controlled environment would allow her to work, but she could not continue, and while she was working, she was not earning an amount equivalent to her pre-injury wage. Doctors have warned her against exposure to environmental hazards, and Claimant described graphically the everyday exposures that can and do cause her to have an acute asthma attack.

DISCUSSION

The August 17, 2000 claim was filed as a separate injury, but Claimant has never been sure whether it was in fact a new injury or just a flare-up of symptoms from her pre-existing condition. Despite the serious consequences of that asthma attack, there is insufficient evidence to show that there resulted new damage or harm to the physical structure of Claimant's body from the August 17 event. Therefore, even though Claimant proved that she timely

notified IBM about the occurrence, there is no new compensable injury.

Carrier alleges that Claimant recovered fully from the March 29 injury, and that any periods of time away from work after April 26, 2000 do not constitute disability. That contention is not consistent with Carrier's acceptance of an aggravation injury and with Claimant's evidence as to the long-term change in her condition after the March 29, 2000 event.

Since Claimant's asthma was aggravated by the March 29, 2000 injury, Carrier is liable for the consequences of such aggravation. The consequences include Claimant's inability to tolerate hot environments such as the one she was exposed to at work on August 17, 2000. That August 17 event was one of the triggers of the asthma attack that hospitalized Claimant on August 19, 2000, and has prevented her from returning to her pre-injury employment since that date.

Claimant has struggled mightily to find supporting evidence to show what she was exposed to on March 29, 2000 that caused the aggravation of her asthma. That is of no consequence, since Carrier has accepted an aggravation injury. Claimant's testimony as to the triggers for her asthma, and the differences in those triggers before and after the aggravation, is sufficient to tie the August 17, 2000 event to the ensuing asthma attack.

Claimant failed to prove that her chronic obstructive pulmonary disease (COPD) or any mental trauma injury stems from the March 29, 2000 injury. Claimant had a long history of depression and was taking Paxil prior to the March 29, 2000 injury. No professional has made an adequate statement of opinion as to how the compensable injury led to any mental trauma injury.

Dr. Gupta mentioned COPD after the March 29 injury and after the August 17 recurrence, did not think that the COPD was work related. No doctor has provided the necessary medical opinion to support such a tie.

Even though all of the evidence presented was not discussed, it was considered. The findings of Fact and Conclusions of Law are based on all of the evidence presented.

ATTORNEY FEES

Carrier was represented by an attorney at the hearing. A separate order on attorney fees may be issued.

FINDINGS OF FACT

The parties stipulated the following facts:

A. On March 29, 2000 and August 17, 2000, the Claimant was the employee of International Business Machines, Inc., Employer.
B. On March 29, 2000 and August 17, 2000, Employer had workers' compensation insurance with Liberty Mutual Insurance Company, Carrier.
C. Venue is proper in the Houston East Local Office of the Texas Workers' Compensation Commission.
D. Claimant sustained a compensable injury on March 29, 2000, and Carrier has accepted an aggravation of Claimant's chronic asthma.

The hearing officer found the following facts:

1. Claimant's asthma was a long-standing condition.
2. After the March 29, 2000 aggravation injury, Claimant was more susceptible to asthma attacks brought on by environmental factors such as heat, dust, and odors.
3. Claimant's work at Bank One on August 17, 2000 was a triggering factor for a severe asthma attack.
4. Claimant did not sustain new or additional damage or harm to the physical structure of her body due to the work environment on Augusts 17, 2000.
5. The alleged work injury of August 17, 2000 was reported to the employer within 30 days after August 17, 2000.
6. Claimant had chronic obstructive pulmonary disease prior to march 29, 2000, and it was not aggravated by the events of March 29 or August 17, 2000.

7. Claimant has been diagnosed with anxiety and depression.
8. Claimant's anxiety and depression were not caused or aggravated by the compensable injury on March 29, 2000.
9. Due at least in part to the injury of March 29, 2000, beginning March 30, 2000 and continuing through April 25, 2000, and again from August 19, 2000 through the date of this hearing, Claimant has been unable to obtain and retain employment at wages equivalent to her pre-injury wage.

CONCLUSIONS OF LAW

1. The Texas Workers' Compensation Commission has jurisdiction to hear this case.
2. Venue was proper in the Houston East Local Office.
3. The compensable injury of March 29, 2000 extends to chronic asthma but does not extend to chronic obstructive pulmonary disease or mental trauma.
4. Claimant had disability from the March 29, 2000 injury, from March 30, 2000 through August 25, 2000, and again from August 19, 2000 through the date of this hearing.
5. Claimant did not sustain a compensable injury on August 17, 2000, and therefore did not have a disability resulting from the claimed injury.
6. Carrier is not relieved of liability for the claimed injury of August 17, 2000, vecause it was timely reported.

DECISION

The compensable injury of March 29, 2000 extends to chronic asthma but does not extend to chronic obstructive pulmonary disease or mental trauma. Claimant had disability from the March 29, 2000 injury, from March 30, 2000 through April 25, 2000, and again from August 19, 2000 through the date of this hearing. Claimant did not sustain a compensable injury on August 17, 2000, and therefore did not have disability resulting from the claimed injury. Carrier is not relieved of liability for the claimed injury of August 17, 2000, because it was timely reported. Claimant is

entitled to temporary income benefits for all periods of disability through the date of maximum medical improvement. Accrued and past due income benefits shall be paid in a lump sum with interest.

ORDER

With respect to 00071055-01:
Carrier is ordered to pay medical and income benefits in accordance with this decision, the Texas Workers' Compensation Act and the Commission's Rules

With respect to X2153405-01:
Carrier is not liable for benefits and it is so ordered.

Signed this 30th day of April, 2003.

Steven R. Lynch
Hearing Officer

APPENDIX H

Durable Power of Attorney

I, Donna Gail Adams (the "Grantor)(Social Security Number 467-19-8758), residing at R. 5 Box 94A (CR 235), Alvin, Texas 77511, to provide for management of my (Grantor's) person, body, health, medical, legal and business affairs, in a more orderly fashion, and in accordance with my current health condition that can become "life threatening" if subjected to additional legal or work related stress, hereby declare as follows:

a. APPOINTMENT OF ATTORNEY IN FACT AND HEALTH CARE AGENT

I hereby make, constitute, and appoints ("Grant") Robert Lynn Hedrick, individually and as Managing Director of Parents For Family Court Justice (832-428-3150), their employees, consultants, attorney's and other consulting members at 7017 Almeda Rd. #292, Houston, Texas 77054, as my Agent(s)

b. POWERS OF AGENT

(1) I grant to my Agent all the powers and rights necessary to effect my wishes, solely for the purposes and objectives specifically set forth herein:

(2) I grant to my Agent full power and attorney to do, take, and perform each and every act and thing whatsoever requisite, proper, or necessary to be done, in the exercise of any of the rights and powers herein granted, necessary to carry out my wishes, and available under law to an Agent, acting in such capacity and for the purposes herein indicated. I grant my Agent the authority to act as fully, and for all reasons and purposes, as I might or could act if I were personally present and able including, the powers to, by way of example and not limitation, the following:

(3) To secure, on my behalf, all medical records, x-rays, admission records, treatment documents, notes, evaluations, recommendations, test results, worker's compensation records,

insurance records and any other correspondence related to my health condition and medical treatment to include, but not limited to written, taped, or computer media located in any location or in the possession of any individual. I grant my Agent full power and authority to take any legal action required to secure these records and to be present and represent me, as I might or could act if I were personally present, in any legal proceeding required to secure these records.

(4) To process all paperwork required to submit to the Social Security Administration a request for Social Security Disability Benefits as a result of my health condition. I grant my Agent full power and authority to take any legal action required to process this application and to be present and represent me, as I might or could act if I were personally present, in any legal proceeding required to secure these benefits.

(5) To represent me in all negotiations and conversations between myself and my employer International Business Machines (IBM), as I might or could act if I were personally present, concerning any Worker's Compensation Claims, Corporate Open Door Complaints, Sexual Harassment Complaints, Sexual Discrimination Complaints, Complaints to, but not limited to, Equal Employment Opportunity Commission, Fair Labor and Standards and any other local, state or federal entity. I grant my Agent full power and authority to take any legal action required to be present and represent me, as I might or could act if I were personally present, in any legal proceedings(s) required as a result of any of the above listed items.

(6) Work related stress could cause further **"life threatening"** conditions for me with my current health condition. I hereby direct that all verbal and written contact by my employer, his employees, attorneys or assigns, in regard to the items listed in (5 above) be processed through my agent and not directly to me. This includes telephone conversations, conferences, meetings or any other method of contact or communication that might cause **"life threatening"** stress. This does not include normal daily operational communications requirements. I grant my Agent full power and authority to take any legal action required to insure that

this directive is adhered to and to represent me, as I might or could act if I were present, in any legal proceeding(s) required to enforce the removal of **"life threatening"** stress as a results of my having exercised my rights as an employee of IBM.

(7) To give or without consent to any medical procedure, test, or treatment, including surgery, to the extent permitted in accordance with my religious preference set forth in my Living Will, if any. To arrange for my hospitalization, convalescent care, hospice, or home care. To summon paramedics or other emergency medical personnel and seek emergency treatment for me. To withdraw, modify, or change consent to any medical procedure, test, and treatment, hospitalization, convalescent care, hospice, home care or other treatment that either I or my Agent may have arranged.

(8) To order whatever is appropriate to keep me as comfortable and free of pain as is reasonably possible, including the administration of pain-relieving drugs, surgical or medical procedures calculated to relieve my pain, unconventional pain-relief therapies that my Agent believes may be helpful.

(9) May Agent shall be able to sign, execute, deliver, and acknowledge any contract or other document that may be necessary, desirable, or convenient, or proper in order to exercise any of the powers described in this **Durable Power of Attorney** and to incur reasonable costs in the exercise of any such powers.

(10) To request, receive, and review any information regarding my medical, physical, mental health, including but not limited to hospital records, and to execute any release or other documents that my be required in order to obtain such information and to disclose such information to such persons, organizations, and others as my Agent shall deem appropriate.

(11) To request, receive, and review any information regarding my employment with International Business Machines (IBM) including but not limited to personnel records, evaluations, complaints, job descriptions, policies and procedures, and to execute any release or other documents that may be required in order to obtain such information and to disclose such information

to such persons, organizations, and others as my Agent shall deem appropriate.

(12) Legal Actions – Settle, adjust, compromise, or submit to arbitration any accounts, claims, debts, demands, disputes, or other matters between Grantor and any other person or entity, or which concern any property, right, title, interest, or estate. Begin, prosecute, enforce, abandon, defend, or settle all claims or judicial or administrative proceedings.

(13) Social Security and Government Benefits - Apply to any government agency for any benefit or government obligation to which Grantor may be entitled.

c. APPROVAL

Grantor hereby approves and confirms all acts performed by Grantor's Agent on Grantor's behalf. Grantor hereby ratifies and confirms all that the Agent shall do or cause to be done, by virtue of this Power of Attorney.

d. DURABLE POWER – DISABILITY DOES NOT AFFECT GRANT

This Power of Attorney shall not be affected by Grantor's subsequent disability as principal. Grantor does hereby so provide, it being Grantor's intention that all powers conferred upon the Agent herein shall remain at all times in full force and effect, notwithstanding Grantor's subsequent incapacity, disability, or any uncertainty with regard thereto.

e. ADDITIONAL POWERS

In addition to, and not by way of limitation upon, any other powers conferred upon Grantor's Agent herein, Grantor grants to the Agent full power and authority to do, take, and perform each and every act and thing whatsoever requisite, proper, or necessary to be done in the exercise of any of the rights and powers herein granted, or available under law to any Attorney-in Fact, as fully to all intents and purposes as Grantor might or could do if personally

present, with full power of substitution or revocation, hereby ratifying and confirming all that said Agent shall lawfully do or cause to be done by virtue of this Power of Attorney and the rights and powers herein granted.

f. THIRD PARTY RELIANCE

Third parties may rely upon the representations of the Agent for all matters relating to any power granted to the Agent, and no person who may act in reliance upon the representations of the Agent or the authority granted to the Agent shall incur any liability to the Grantor or Grantor's estate as a result of permitting the Agent to exercise such power. Any third party may rely on a duly executed counterpart of this instrument, or a copy thereof, as fully and completely as if such third party had received the original of this instrument. Any third party may rely on the authority of any Alternate Agent when such Alternate Agent presents an original executed copy of this Power of Attorney. Such third party need not request proof, other than an affidavit of the Alternate Agent, under oath, that any prior named Agent is unable or unwilling to serve in such capacity.

g. TERMINATION OF GRANT

Revocation of Power by Grantor: "This Power of Attorney is not coupled with an interest and there is no agreement between Grantor and the Agent or Alternate Agent(s) limiting or restricting in any manner Grantor's right to revoke this Power of Attorney. In addition to any other method permitted by law Grantor may revoke this Power of Attorney by destroying all executed copies of this Power of Attorney, or revoke the power granted to any one or more of the Agent(s) or Alternate Agent(s)by giving written notice to such Agent or Alternate Agent via certified mail return receipt requested, overnight courier, or hand delivery, at the address set forth herein for such Agent or Alternate Agent(s), unless Grantor has knowledge that such Agent or Alternate Agent(s) has a different address.

Termination by Disability or Death of Agent: The Grant of this Power of Attorney to any Agent shall terminate upon such Agent's subsequent disability or death.
Resignation of Agent: Any Agent may resign by providing written notice to Grantor (or Grantor's guardian or committee) with copy to the next named Agent or a court of competent jurisdiction.

Validity of Acts Following Revocation: Any act of the Agent between the revocation of this Power of Attorney and notice of that revocation to the Agent shall be valid unless the Agent, or other person claiming the benefit of the act, had actual knowledge of that revocation.

Affidavit Sufficient Proof for Third Party: It shall be sufficient proof for any third party relying on this document, if such third party has no actual knowledge of the termination of this agreement (without any duty of inquiry being imposed on such third party), that the Agent shall provide an affidavit that this Power of Attorney has not terminated under oath.

h. CONSTRUCTION

This instrument is to be construed and interpreted as a durable general power of attorney. The enumeration of specific items, rights, acts, or powers herein is not intended to nor does it limit or restrict, and is not to be construed or interpreted as limiting or restricting, the general powers herein granted to the Agent.

This instrument is executed in the state of Texas, and the laws of State shall govern all questions as to the validity of this power and the construction of its provisions. It is Grantor's intention, however, that this Power of Attorney be exercisable in any other state or jurisdiction in which Grantor may at the time have property, business, or other dealings.

Should any provision or power in this document not be enforceable, such enforce ability shall not affect the enforce ability of the rest of this document.

Captions, titles, and section numbers (and letter designations) are inserted for convenience only and should not be read to broaden or limit the scope of any provision. Gender, singular or plural, shall be interpreted as the context requires.

i. STATE LAW

This instrument is delivered in State of Texas, and the laws of the State of Texas shall govern all questions as to the validity of this power and the construction of its provisions. The Agent is, notwithstanding anything herein to the contrary, granted the right to exercise of any of the rights and powers available under the laws of the State of Texas. This power of attorney shall not be affected by disability of the principal. This provision shall be interpreted in the broadest terms so as to remain in effect throughout Grantor's disability to the fullest extent provided for under the laws of the State of Texas.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this 2nd day of October, 2000. acknowledging that I have read and understand the powers and rights herein granted and that Grantor voluntarily shoes to make the Grant.

Signed
Donna Gail Adams
Grantor/Principal

WITNESS: **Signed** **Signed**
Jackie D. Barber **Linda Logsdon**

STATE OF TEXAS)
)
)
COUNTY OF BRAZORIA)

On this 2 day of October, 2000, I, a Notary Public in the State of Texas, certify that before me personally appeared Donna Gail Adams, who resides at Rt. 5, Box 94A (CR235), Alvin, Texas, 77511, and who I am satisfied is the person named in and who

executed the within Power of Attorney, and who acknowledged under oath, ant to my satisfaction, that the execution of the Power of Attorney by Grantor was done voluntarily for the uses and purposes therein expressed, and that Grantor, signed, sealed, and delivered the Power of Attorney as Grantor's act and deed. The execution of this Power of Attorney by the Grantor was done in my presence and in the presence of both witnesses above, each of whom signed their names in my presence and in Grantor's presence.

Signed

Notary Public, State of Texas
My commission expires 10/14/2003

PAMELA KAYE TRACY
Notary Public, State of Texas
My Commission Expires
October 14, 2003

APPENDIX I

TO: United States District Court
Southern District of Texas
Houston Division
515 Rusk Street
Houston, TX 77002

FR: Sphuler Medical Associates, PA
401 East Parkwood
Friendswood, TX 77546 May 4, 2005

Re: Medical Condition of Donna Adams (Hedrick)

I am the primary medical provider for Donna Adams (Hedrick). It is my understanding that there will be a series of court hearings held in the United States District Court at which Donna Adams (Hedrick) will be required to attend.

Donna's medical condition is such that a serious asthma attack can be "triggered" by her being exposed to perfumes, after shave lotions, candle fragrances, excessive heat and stifling conditions.

I do not recommend Donna be present at any hearing or meeting to be held in the confines of offices or judges chambers that is not large enough for her to be able to isolate herself from the above items that could trigger a serious asthma attack. Her having to attend hearings in such a place can be very detrimental to her health condition and could result in a serious asthma attack.

Sincerely,

Wanda P. Sphuler, MD

APPENDIX J

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

LIBERTY MUTUAL I INSURANCE COMPANY PLAINTIFF/CROSS DEFENDANT	§	*FILED Jun 2, 2005*
V.	§	
DONNA ADAMS DEFENDANT	§	NO. H-05-1974
ROBERT HEDRICK GRANTEE UNDER POWER OF ATTORNEY; NEXT BEST FRIEND; SPOUSE; INTERVENOR	§	Case # 25628-1 Removed From 239th Judicial District Court Brazoria County, TX

DEFENDANT'S MOTION TO RECOGNIZED "NEXT BEST FRIEND"
MOTION TO RECOGNIZE STANDING UNDER POWER OF ATTORNEY
OR IN LIEU OF
MOTION FOR APPOINTMENT OF GUARDING AD LITEM

A. Introduction

1. Plaintiff is LIBERTY MUTUAL INSURANCE COMPANY; DEFENDANT IS DONNA ADAMS. Robert Hedrick is the spouse of Donna Adams, her next best friend, and has been granted Power of Attorney out of medical necessity to represent Donna Adams (as if he were, in fact Donna Adams) under legally executed power of attorney under the laws of the State of Texas and has sued in his capacity of "NEXT BEST FRIEND".
2. On August 21, 2003 plaintiff sued defendant to set aside the final decision and award of Workers' Compensation Commission of the State of Texas, filed on July 14, 2003 under Commission

number HE-00071055-02-CC-HD48 styled Donna Adams, Claimant, v. Liberty Mutual Insurance Company, Carrier.
3. Donna Adams Hedrick is represented by Robert Hedrick as next best friend.

B. Argument

4. The court has the authority to appoint a guardian ad litem to protect the interests of minors and incompetents. See Fed. R. Civ. P. 17 (c).
5. Robert Hedrick has been granted authority under Power of Attorney properly executed under the laws of the State of Texas out of medical necessity **(Exhibit A).** Robert Hedrick has sued as "next best friend" on behalf of Donna Adams Hedrick. Liberty Mutual Insurance Company has objected to this.
6. Donna Adams Hedrick is medically incompetent to not only defend herself, but medically incompetent to attending hearings or even trials. Her medical condition is outlined by Wanda P. Spuhler, MD in a letter to the court on May 4, 2005 **(Exhibit B).** The risks to Donna Adams Hedrick and potential life threatening asthma attacks will in the courtroom, regardless of size of the room are not worth chancing when she has consented to "next best friend" representation or appointment of Robert Hedrick as her guardian ad litem. The court runs a considerable risk of liability for any fatal asthma attack that could occur should Donna Adams Hedrick be required to subject herself to the atmosphere or stress of hearings or extended trial before the court. In so much, as she has consented to Robert Hedrick suing on her behalf as next best friend, grantee under power of attorney or even as court appointed guardian ad litem this court has an obligation to recognize one of these capacities.
7. To maintain a suit in federal court, a minor or incompetent must be represented by a competent adult. Fed. R. Civ. P. 17(c); *Enk v. Brophy,* 124 f.3D 893, 895 (7TH Cir. 1997. Donna Adams Hedrick is represented by Robert Hedrick, a competent adult. This court has a mandate to insure that Donna Adams Hedrick receives a fair trial. This court has three choices:

A. Recognize the status of Robert Hedrick as Next Best Friend and his right to sue on behalf of Donna Adams Hedrick.

B. Recognize the status of Robert Hedrick to sue on behalf of Donna Adams Hedrick in his capacity as granted under Power of Attorney due to medical necessity.

C. Appoint Robert Hedrick as Guardian Ad Litem for Donna Adams Hedrick with full rights to sue on her behalf.

C. Conclusion

8. Donna Adams Hedrick is medically incompetent to attend or represent herself before the court and risks bodily injury to attend hearings or even to attend a prolonged trial. She has consistently approved and requested that Robert Hedrick represent her. For these reasons Donna Adams Hedrick asks the court to recognize Robert Hedrick as her "Next Best Friend". Grantee under Power of Attorney or in lieu of these appoint Robert Hedrick as her Guardian Ad Litem on the courts order and without hearing.

9. Donna Adams Hedrick asks the court to extend this to apply to state court as well as federal court.

Respectfully submitted,

Donna Adams-Hedrick
16718 Bougainvilla
Friendswood, TX 77546
281-648-1296

Robert Hedrick
16718 Bougainvilla
Friendswood, TX 77546
281-648-1296

6-2-05

APPENDIX K

TO: United States District Court
Southern District of Texas
Houston Division
515 Rusk Street
Houston, TX 77546

FR: Sphuler Medical Associates, PA
401 East Parkwood
Friendswood, TX 77546 July 20, 2005

Re: Medical Condition of Donna Adams (Hedrick)

I am the primary medical provider for Donna Adams (Hedrick). It is my understanding that there will be a series of hearings held in the United States District Court including one scheduled for 7-15-05 at 11:00 a.m. at which Donna Adams (Hedrick) will be required to attend.

Donna's medical condition is such that a serious asthma attack can be "triggered" by her being exposed to perfumes, after shave lotions, candle fragrances, excessive heat and stifling conditions.

I do not recommend Donna to be present at any hearings or meetings to be held in conditions where any of these threats may be present. She would need to be able to isolate herself from exposure to these things. I would recommend that if possible her participation be done by telephone or other remote means. Attending any hearings where she would be exposed to any of the items listed above could trigger an asthma attack would be very detrimental to her health condition and could results in a serious asthma attack.

Wanda P. Spuhler, MD

APPENDIX L

NO. 25628

LIBERTY MUTUAL INSURANCE COMPANY	§IN THE DISTRICT COURT §
Plaintiff,	§BRAZORIA COUNTY, §TEXAS
VS.	§ 239TH JUDICIAL DISTRICT §
DONNA ADAMS,	§
Defendant	§JURY TRIAL REQUESTED

DEFENDANT'S MOTION FOR APPOINTMENT OF GUARDIAN AD LITEM AND MOTION FOR CONTINUANCE TO RESPOND TO DISCOVERY AND OTHER MOTIONS

TO THE HONORABLE JUDGE OF SAID COURT:

Defendant **Donna Adams** asks the court to appoint a guardian ad litem in this case, under the authority of Texas Rules of Civil Procedure 173.

A. Introduction

1. Plaintiff is Liberty Mutual Insurance Company; Defendant is Donna Adams.

2. Plaintiff sued defendant to set aside the final decision and award of the Workers' Compensation Commission of the State of Texas filed on July 14, 2003.

3. Donna Adams, the defendant in this suit, is not represented by a guardian or next friend.

4. The court should appoint a guardian ad litem in this case because defendant is an incapacitated person, is severely ill and under medical care, taking numerous medications which affect her ability to think clearly, and is incapable of representing her own interests.

5. It is my wish that the court appoint my husband, Robert Lynn Hedrick to whom I have granted my power of attorney on October 2, 2000(Exhibit A), who is my best friend and who represented my interests before the Texas Workers' Compensation Commission which found in my favor as my guardian ad litem.

B. Facts

6. Texas Workers' Compensation Commission (hereinafter referred to as TWCC)records indicate that on March 29, 2000 I was injured at a 24 Hour Fitness Center in Houston, Texas while performing installation of computers for my employer International Business Machines (IBM). The 24 Hour Fitness center was under construction and contractors were sanding Formica and particle board counters some of which had been glued using epoxy resin glue. Conclusive evidence was submitted to the TWCC and included in the records of the final review hearing that Formica and particle board is primarily made up of formaldehyde, which according to OSHA and the Centers for Disease Control (CDC) is hazardous and life threatening to persons with asthma.

7. **OSHA Directive,CPL 2-2.52 Enforcement Procedure for Occupational Exposure to Formaldehyde** (Exhibit B) indicates:

6 2. Formaldehyde Exposure.

a. Formaldehyde Exposure can occur in three ways:

"(1) Exposure to liquid or solid formaldehyde (Para formaldehyde) and the accompanying vapors;

(2) Exposure to formaldehyde during primary processing of formaldehyde resins and other chemicals manufactured from formaldehyde; and

(3) **Exposure to formaldehyde released from products that contain formaldehyde-based resins."**

I was exposed in the third manner.

OSHA goes on to state:

"c. Occupational exposure to formaldehyde occur when a finished product contains residual formaldehyde or when hydrolysis—that is, the chemical break-down of formaldehyde-containing materials to produce formaldehyde gas prompted by warm and humid work environments—occurs. The EPA has described this phenomenon as "pseudo consumptive use" of formaldehyde; i.e., chemical identity is changed but not

irreversibly. Examples of "Pseudo consumptive" uses are: (1) urea formaldehyde resins in fiberboard, particle board, plywood, laminates, urea formaldehyde foams and insulation products, molding compounds, and

protective coatings...."

8. MSDS sheets submitted to the TWCC indicate that after ingestion of formaldehyde degenerative changes may be found in the **liver, kidneys, heart and brain.**

9. Plaintiff, Liberty Mutual Insurance Company, accepted the exposure to formaldehyde injury as a compensatable, work related injury, a fact that is not in contest in this court.

10. Evidence was also submitted at the final hearing of the TWCC that when a person is exposed to formaldehyde and in particular **"dust laden"** particles containing formaldehyde they become "sensitized" to "triggers" that cause an asthma attack which did not cause an asthmatic reaction prior to that exposure.

11. My medical records show that exposure to heat and cold cause an asthma attack. My medical records indicate that exposure to perfumes, candle smells and after shave lotion and colognes cause me to have an asthma attack.

12. My medical records and evidence submitted at the final hearing of the TWCC indicate that I was exposed to excessive heat on August 17, 2000 while at a Bank One doing a job for IBM. The TWCC ruled that the resulting injury on August 17, 2000 aggravated the previous injury on March 29, 2000.

13. In the months following these injuries I have attempted to go back to work without success. My medical condition since the injury and aggravation of the injury has resulted in more medical treatment and hospitalization.

14. During the last week of August 2003 I accepted a position with Target located on Bay Area Blvd. in the produce department thinking that it was a job that I could do.

15. On October 10, 2003 my job required me to go in and out of the walk in cooler for most of the day.

16. At 4:30 p.m. I had a severe asthma attack brought on by the exposure to the cold (sensitized by the formaldehyde exposure) and was rushed to the emergency room at Clear Lake Regional where I was hospitalized until October 14, 2003.

17. Since that date I have been required to remain at home while numerous medical tests have been completed. I am not able to return to work.

18. I am now under the care of:

Dr. Wanda P. Spuhler

401 E. Parkway

Friendswood, TX 77546

(281)648-4900

19. On November 7, 2003 I had ex-rays taken, blood tests, breathing tests, sputum and urine tests done which indicated lung and liver problems. On November 11, 2003 I had a CAT SCAN and breathing tests which indicated that I had more lung damage resulting from the hospitalization. The blood tests indicated liver injuries that are now being evaluated by more tests.

20. As previously discussed liver injuries are indicative of **formaldehyde ingestation.** I now may have severe liver damage. The worries associated with this aspect of my worsening medical condition makes it difficult for me to concentrate on any of the legal issues at a time I am worried about possible "liver and lung failure".

21. As a result of my medical condition, hospitalization and uncertainty of my future I have been physically unable and mentally unable to represent myself, respond to motions for discovery or motion to abate.

22. Accordingly, to protect my rights to due process I would request that the court appoint my husband to represent me and allow 60 days for him to respond on my behalf to motions for discovery and any other motions to which I have been medically unable to respond.

23. I am now taking numerous medications some of which cause severe drowsiness, dizziness, nausea, or other side effects that make it impossible for me to concentrate on my legal defense. (Exhibit C)

C. Argument & Authorities

23. A court has the authority to appoint a guardian ad litem to safeguard the interests of an incapacitated person.

24. A court should appoint a guardian ad litem if an incapacitated person is named as the defendant in the lawsuit and does not have a guardian within the State of Texas. Tex. R. Civ. P. 173. Because Donna Adams does not have an appointed guardian within this state, it is necessary that this court appoint a guardian ad litem to protect and represent her interest in this case.

D. Conclusion

25. Based upon my current physical, medical and mental condition and the doubts that are present as to my capacity to represent myself or to even attend hearings the court should grant my request for the appointment of my husband as my guardian ad litem and grant an extension of time of 60 days for him to respond to any current motions that I have not been able to respond to.

E. Prayer

26. For these reasons, Defendant Donna Adams asks the court to appoint Robert Hedrick as guardian ad litem for Donna Adams, grant the extension of time I have requested and order a reasonable fee to be paid to the guardian ad litem.

Dated this 17th day of November, 2003
Respectfully submitted,

Donna Adams

APPENDIX M
NO. 25628

LIBERTY MUTUAL INSURANCE COMPANY	§	IN THE DISTRICT COURT
Plaintiff,	§	BRAZORIA COUNTY, TEXAS
VS.	§	239TH JUDICIAL DISTRICT
DONNA ADAMS,	§	
Defendant	§	JURY TRIAL REQUESTED

OBJECTION TO ORAL HEARING SCHEDULED FOR MONDAY, January 26, 2002 at 1:00 p.m. on PLAINTIFF'S MOTION TO SEVER; MOTION TO ABATE

REQUEST FOR CONTINUANCE ON PLAINTIFF'S MOTION TO SEVER; MOTION TO ABATE UNTIL HEARING AND RULING ON DEFENDANT'S MOTION FOR CONTEMPT; MOTION FOR SANCTIONS; MOTION TO COMPEL; MOTION FOR FINDING OF "BAD FAITH" ACTION; MOTION TO DISQUALIFY TOMMY L. SMITH
AND
REQUEST FOR DEFAULT ORDER (WITHOUT HEARING) ON DEFENDANT'S MOTION FOR APPOINTMENT OF GUARDIAN AD LITEM AND
MOTION FOR CONTINUANCE TO RESPOND TO DISCOVERY AND OTHER MOTIONS

TO THE HONORABLE JUDGE OF SAID COURT:

Defendant **Donna Adams objects** to the scheduling of an oral hearing by Plaintiff's for Monday, January 26, 2004 at 1:00 p.m. and requests that the court grant a continuance on Plaintiff's Motion for Severance and Abatement until such time as the following motions filed by Defendant are heard and ruled upon:

1. Defendants MOTION FOR CONTEMPT filed on November 10, 2003;

2. Defendants MOTION FOR SANCTIONS filed on November 10, 2003;
3. Defendants MOTION TO COMPEL filed on November 10, 2003;
4. Defendants MOTION FOR FINDING OF "BAD FAITH" ACTION filed on November 10, 2003;
5. Defendants MOTION TO DISQUALIFY TOMMY L. SMITH filed on November 10, 2003;
6. Defendants MOTION FOR APPOINTMENT OF GUARDIAN AD LITEM AND MOTION FOR CONTINUANCE TO RESPOND TO DISCOVERY AND OTHER MOTIONS filed on November 10, 2003.

Defendant objects to the oral hearing scheduled by Plaintiff and the court on January 26, 2004 at 1:00 p.m. for the following reasons:

A. Defendant has advised the court that she is not physically, mentally or intelligently able to defend herself before this court and has appropriately requested that the court appoint her husband Robert L. Hedrick as her GUARDIAN AD LITEM to represent her. Any hearing on any matter prior to appointment of competent representation constitutes a **"denial of my constitutionally guaranteed due process rights"** to competent representation before the court. The court has been advised that I am not competent to represent myself nor am I able to attend the hearings unless the court takes extensive medical steps to eliminate any exposure to harmful smells, perfumes or other odors.

2. I have filed a Motion for Contempt against Defendant Liberty Mutual Insurance Company for failure to comply with a court order. If found in contempt of the orders of the TWCC hearing officer defendant would also have acted in "Bad Faith"; upon which finding Plaintiffs Motion for Severance/Motion to Abate becomes moot as the court would also have to concede that defendant committed an intentional tort by denying medical care (without due cause and in "bad faith") during the course of the medical treatment of Donna Adams-Hedrick. This is a criminal matter that under Government Code § 21.002 the lawyer (in this case Tommy L. Smith) and the party (Liberty Mutual Insurance Company) may face confinement up to 6 months or fine up to $500 or both. The courts have consistently held that criminal matters

before a court must be heard prior to proceeding with any further civil matters. Failure to due so would again result in **"denial of constitutional guarantees"** to a fair trial.

3. I cannot attend the hearing on January 26, 2004 due to my health condition and even if the court were to grant approval of Robert Hedrick as GUARDIAN AD LITEM or allowed him to represent me as "next best friend" or under the "power of attorney" that I have granted to him; he will not be in the State of Texas from January 22 to January 31. He is scheduled to be in Chicago and in Washington D.C. during these dates on business and cannot be available. The first available dates for any hearing in which he could attend would be February 4 to February 14, 2004.

Prayer

Defendant prays that the court issue a continuance on Plaintiffs Motion for Severance/Motion to Abate until the court rules on all of Defendants Motions. Defendant prays that the court grant Defendants MOTION FOR APPOINTMENT OF GUARDIAN AD LITEM AND MOTION FOR CONTINUANCE TO RESPOND TO DISCOVERY AND OTHER MOTIONS filed on November 10, 2003 **without hearing** (Order Attached). Plaintiffs have filed no objection to the Motion filed by Defendants for the appointment of Robert Hedrick as Guardian Ad Litem or Motion for Continuance to Respond to Discovery and Other Motions.

Dated this 12th day of December, 2004
Respectfully submitted,

_____

Donna Adams-Hedrick
17825 Kings Park Ln. #817
Houston, TX 77058